IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRP.No. 375 of 2007(F)

TOP.50/2007 of D.C. & SESSIONS COURT, ERNAKULAM
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REVN. PETITIONER:

MRS.JABEENA ABRAHAM,
W/O.ABRAHAM, ANPAL BUILDING,
BANERJI ROAD, ERNAKULAM,
KOCHI-682018.

BY ADV. SRI.M.P.ABRAHAM(SR)
SRI.ABEESH JOSE

RESPONDENTS/RESPONDENTS:
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1. MUTHOOT M.GEORGE CHIETTY FUND,
REP.BY MANAGING PARTNER, GEORGE ALEXANDER,
BALMONT PLAZA, BANERJI ROAD, ERNAKULAM,
KOCHI-18.

2. M/S.MUTHOOT LEASING AND FINANCE LTD.,
P.B.NO.2029, BALMONT PLAZA, BANERJI ROAD,
ERNAKULAM, KOCHI-18.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 375 OF 2007

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Dated this the 4th day of July, 2007.

O R D E R

This revision petition is preferred against the order of the District Judge, Ernakulam in TOP 50/07. The prayer in the transfer petition was to transfer O.S.334/04 pending before the II Addl. Munsiff, Ernakulam to the Principal Sub Court, Ernakulam for joint trial of the said case along with O.S.3/04 of the that Court. The learned District Judge did not entertain it on the ground that if joint trial is ordered, disposal of the suit will indefinitely delayed. He also held that joint trial is not at all required.

2. I heard the counsel appearing for both sides. O.S.334/04 pending before the II Addl. Munsiff, Ernakulam is one for return of a movable from the erstwhile landlord. The suit O.S.3/04 is one for realisation of the amount due from the former tenant and there is a specific pleading in that case that the tenant has sold the movable involved in O.S.334/04 to her and therefore she claimed only the balance amount as due from the tenant. So, in order to determine the controversy pending before the Subordinate Judge's Court, Ernakulam a finding has to be entered

into on the question whether the movable involved in 334/04 is sold to the landlord or not. If it is sold, necessarily prayer in O.S.334/04 cannot be granted. If it is otherwise, the so called adjustment made by the landlord cannot hold good. Therefore, it is only just and proper that the cases be heard by one and the same Court for a proper adjudication of the matter. Otherwise there is every likelihood of having conflicting findings which will lead to confusion at a later stage. Just because the trial is commenced in O.S.334/04 it cannot be said that it should not be jointly tried with the other case. Therefore, reasoning and approach of the learned District Judge is erroneous and it is to be interfered with and therefore the order passed by him in TOP 50/07 is set aside and the case O.S.334/04 of the 2nd Addl. Munsiff, Ernakulam is transferred to the Principal Sub Court, Ernakulam to be jointly tried with O.S.3/04 pending before that Court. The learned Munsiff is directed to transfer the entire case records to the learned Sub Judge for the purpose of joint trial and disposal.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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